

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

WEALTH TAX REFERENCE No 47 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER and
MR.JUSTICE A.L.DAVE

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF WEALTH-TAX

Versus

RAVJIBHAI PANCHANBHAI PATEL

Appearance:

MR NAIK WITH MANISH R BHATT for Petitioner
NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE C.K.THAKKER and
MR.JUSTICE A.L.DAVE

Date of decision: 01/09/1999

ORAL JUDGEMENT (Per: C.K.Thakkar, J.)

1. The following question is referred for the
opinion of this Court :-

"Whether, on the facts and in the circumstances
of the case, the Tribunal was right in law in
coming to the conclusion that the assessee was

entitled to exemption under Section 5(1)(xxxiii) of the W.T. Act?"

2. Short facts of the case are that the assessee claimed exemption under Section 5(1)(xxxiii) of the Wealth Tax Act, 1957 (hereinafter referred to as "the Act"). Under the said provision, the value of any assets brought into India by a person of Indian origin who was ordinarily residing in a foreign country and who, on leaving such country, has returned to India with the intention of permanently residing therein, is exempted from payment of Wealth Tax for a period of seven successive years commencing with the assessment year next following the date on which such person returned to India. The provision came into force with effect from 1st April, 1977. It is an admitted fact that the assessee came to India on February 20, 1973 with the intention of permanently staying here.

3. For the assessment years in question, i.e. 1977 to 1980, the Wealth Tax Officer rejected the claim of the assessee on the ground that the exemption would begin immediately from the assessment year next to the one in which the person came to India and there was no warrant for any gap for commencement of exemption after the return of the person to India. According to the Wealth Tax Officer, as the clause operated from 1st April, 1977, it could not be invoked by a person like the assessee, who returned to India before 1st April, 1976, i.e. who came to India in February 1973. The Appellate Assistant Commissioner, however, granted the exemption on the ground that the period of seven years has to be counted from the date of return to India. In further appeal by the Commissioner of Wealth Tax to the Tribunal, the Tribunal observed as under :-

"When this exemption came into effect the fact that the assessee had come to India, did remain a fact and that is the only thing which is required under the provision because it uses the expression 'has returned to India'. Therefore, the period of seven years would begin to run from the assessment year next following the date on which the person returned to India. The result would be that the assessed would lose exemption for the assessment year 1973-74 to 1976-77 but he would be entitled to the exemption for the assessment years 1977-78, 1978-79 and 1979-80. The AAC's order is confirmed and the appeals are rejected."

4. In our opinion, the construction which has been put by the Tribunal is in accordance with law. It, therefore, cannot be said that the Tribunal has committed any error in coming to the conclusion that the assessee was entitled to exemption under Section 5(1)(xxxiii) of the Act.

4. For the foregoing reasons, the reference must be answered in the affirmative, i.e. in favour of assessee and against revenue. Reference accordingly disposed of. No order as to costs.

[C.K. THAKKAR, J.]

[A.L. DAVE, J.]

gt